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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOSEPH R. BECERRA, Plaintiff and Appellant, v. JONES, BELL, ABBOTT, FLEMING & FITZGERALD LLP et al., Defendants and Appellants.	B251189 (Los Angeles County Super. Ct. No. BC510333)

APPEALS from orders of the Superior Court of Los Angeles County. Abraham Khan, Judge. Affirmed as modified.

Lancaster & Anastasia, William H. Lancaster and Damon C. Anastasia for Plaintiff and Appellant.

Gaglione, Dolan & Kaplan, Robert T. Dolan and Martina A. Silas for Defendants and Appellants.

We affirm rulings under the anti-SLAPP statue. (Code Civ. Proc., § 425.16.)[1]

FACTS

Plaintiff and appellant Joseph Becerra is a lawyer. At one time, Becerra was a partner in defendant and cross-appellant Jones, Bell, Abbott, Fleming & Fitzgerald LLP (hereafter Jones or the Jones firm).[2] Becerra left Jones in 2012.

In 2013, Becerra filed a complaint for damages and an accounting against Jones. Becerra's main claim is that his former firm owes him money reflecting attorney's fees it has received as a result of client development and legal work he did while affiliated with the firm. Becerra's pleading alleged nine causes of action, including breach of contract (the parties' partnership agreement) and fraud (essentially based on the theory that Jones promised to pay money to Becerra while harboring the hidden intent not to pay it).

Jones filed an anti-SLAPP motion to strike Becerra's sixth cause of action alleging intentional interference with prospective economic advantage involving a client who left Jones and followed Becerra to his new firm. Jones's anti-SLAPP motion also sought to strike Becerra's ninth cause of action alleging a violation of the unfair competition law. (UCL; see Bus. & Prof. Code, § 17200 et seq.) The specifics of these causes of action are discussed in more detail below in addressing Becerra's current appeal, which is coupled with a cross-appeal by Jones.

In the first step of Jones's anti-SLAPP motion challenge to Becerra's sixth cause of action, the firm accurately showed that the cause of action arose from the firm's act of mailing two letters to a third party, specifically, the defense lawyers in a class action lawsuit known as the *Sankey* case. (*Sankey v. Aeropostale West, Inc.*, L.A. Super. Ct., 2011, No. BC457468.) This was the case noted above in which the plaintiff client left Jones and followed Becerra to his new firm. Jones's letters asserted that the firm had an attorney's lien in the *Sankey* case. Jones argued that the letters constituted protected

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[1] All further references to section 425.16 are to that section of the Code of Civil Procedure.

[2] Our references to Jones or the Jones firm hereafter include a number of individual partners of the firm who are named parties in the current action.

activity within the meaning of the anti-SLAPP statute. Further, Jones argued that Becerra could not win on his sixth cause of action because the firm's letter mailing activity had been absolutely privileged under Civil Code section 47. Jones's anti-SLAPP motion as to Becerra's ninth cause of action mirrored its challenge to his sixth cause of action.[3]

On August 22, 2013, the trial court granted Jones's anti-SLAPP motion to strike Becerra's sixth cause of action. By the same order, the court denied Jones's anti-SLAPP motion to strike Becerra's ninth cause of action.

On November 6, 2013, the court entered an order awarding $27,860 to Jones for its attorney's fees ($27,820) and costs ($40) incurred in bringing its anti-SLAPP motion.

Becerra filed timely notices of appeal from the trial court's orders granting the Jones firm's anti-SLAPP motion to strike Becerra's sixth cause of action, and awarding attorney's fees to Jones. Jones filed a timely cross-appeal from the court's order denying its anti-SLAPP motion to strike Becerra's ninth cause of action.

DISCUSSION

I. The Sixth Cause of Action

Becerra contends the trial court erred in granting Jones Bell's anti-SLAPP motion to strike his sixth cause of action for intentional interference with prospective economic advantage. Becerra is wrong.

The Anti-SLAPP Statute's Striking Procedure

The anti-SLAPP statute authorizes a two-step procedure for striking a cause of action at the earlier stages of litigation when it is established that the cause of action was filed to "chill" the defendant's constitutional rights of free speech and or to petition the government. (§ 425.16, subds. (a) & (b).) In the first step, the court determines whether the moving defendant has shown that a cause of action arises from so-called "protected activity," i.e., from an act in furtherance of the defendant's constitutional right to petition

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[3] Jones anti-SLAPP motion presented the firm's challenge to Becerra's sixth and ninth causes of action in a joint argument which addressed the two causes of action as being based on the same conduct — namely, the mailing of letters by Jones. As we discuss below, Becerra's ninth cause of action alleged a second component — namely, the Jones firm's failure to pay money owed to Becerra.

or free speech as defined in the anti-SLAPP statute. (§ 426.16, subds. (b)(1) & (e).) In the first step examination, the "principal thrust or gravamen" of the plaintiff's cause of action determines whether the anti-SLAPP statute applies, i.e., whether it may be invoked as a procedure for striking the cause of action. (*Martinez v. Metabolife Internat., Inc*. (2003) 113 Cal.App.4th 181, 188.) When, and only when, the court determines that the anti-SLAPP statute applies, the court then undertakes a second step analysis in which it examines the evidence to determine whether the plaintiff has demonstrated a probability of prevailing on his or her cause of action on the merits. (§ 425.16. subd. (b)(1); and see, e.g., *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820 (*Oasis West Realty*).)

On appeal, an order granting or denying an anti-SLAPP motion is reviewed under the de novo standard of review, meaning the appellate court works through the statute's two-step procedure just as the trial court did. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

Analysis

A. The Cause of Action

A careful reading of Becerra's sixth cause of action for intentional interference with prospective economic advantage shows that the cause of action arises from events related to the *Sankey* case. The Jones firm acted as the original attorney of record for the class representative plaintiff in the *Sankey* case. When Becerra left Jones, the plaintiff in the *Sankey* case followed Becerra to his new firm, which substituted in as the plaintiff's counsel of record in August 2012.

On December 18, 2012, an attorney at the Jones firm mailed a one-paragraph letter to the defense lawyers in the *Sankey* case. This letter stated that the Jones firm performed legal work on behalf of the plaintiff in the *Sankey* case, and that she incurred attorney's fees and costs totaling $830,000. Further, the letter stated: "Accordingly, [Jones] has an attorneys' lien in the amount of such fees and costs, and will seek to recover that amount, plus an appropriate enhancement, should the [*Sankey* case] settle or should the plaintiff otherwise prevail."

On February 19, 2013, that same attorney at the Jones firm mailed a second letter to the defense lawyers in the *Sankey* case. The second letter reiterated Jones's claim for attorney's fees and costs totaling $830,000. Further, the letter continued: "Although we have no reason to believe that the parties are presently negotiating a settlement [in the *Sankey* case], we want to make certain that all involved understand that, because [Jones], not Ms. Sankey, owns the claim to this firm's attorneys' fees and advanced expert's fees and costs in these circumstances, there can be no settlement [of the *Sankey* case] with respect to this firm's attorneys' fees and costs without this firm's agreement. *See Lindelli v. Town of San Anselmo*, 139 Cal.App.4th 1499, 1505-10 (2006). Accordingly, if and when there is to be any negotiation of settlement of the attorneys' fees, expert's fees and costs aspect of [the *Sankey* case], such negotiation must involve this firm. Please direct communications concerning this subject to the undersigned."

It is undisputed that the mailings of the two letters summarized above forms the entire basis of Becerra's sixth cause of action for intentional interference with prospective advantage against the Jones firm. In short, Becerra filed his sixth cause of action against Jones claiming he was damaged by the firm's act of mailing two letters to the defense lawyers in the *Sankey* case.

B. Protected activity

The trial court correctly determined that Jones's act of mailing letters constituted protected activity within the meaning of the anti-SLAPP statute. The anti-SLAPP statute establishes a protective umbrella covering "*any* written or oral statement or writing *made in connection with* an issue under consideration or review by a . . . judicial body . . . ." (§ 425.16, subd. (e)(2), italics added.) Plainly, Jones's two letters fell within the parameters of "any writing" that was "made in connection with" a case under consideration by a court. Jones's letters were a writing connected to the *Sankey* case.

Becerra's argument that Jones had no recognized right to assert an attorney's lien in the *Sankey* case demonstrates a misunderstanding of the first step of the anti-SLAPP statute procedure. In the first step in the anti-SLAPP statute procedure, the inquiry is

limited to this question: did Jones get sued for doing an act which falls within the protective reach of the anti-SLAPP statute? As we explained above, plainly it did.

Taheri Law Group v. Evans (2008) 160 Cal.App.4th 482 (*Taheri*) is instructive. In *Taheri*, a law firm sued a competing attorney for intentional interference with prospective economic advantage, alleging that the defendant attorney had improperly solicited one of the plaintiff law firm's potential clients. Our court held that the law firm's cause of action arose from activity protected by the anti-SLAPP statute. As we stated, the plaintiff law firm's complaint plainly showed that the firm's claim arose from the defendant lawyer's communications with another person about pending litigation, fitting within the protected activity of the anti-SLAPP statute. (*Id*. at p. 489.)

Becerra's attempts to distinguish *Taheri* are not persuasive. Becerra argues that it makes a difference in the first step of the anti-SLAPP statute whether a communication was made by a lawyer who was representing a client in a case at the time of the communication. In short, Becerra argues that the protections of the anti-SLAPP statute only apply to certain speakers, depending upon their status at the time of speaking. In Becerra's words, the anti-SLAPP statute does not extend its protections to a "stranger to litigation." We read nothing in *Taheri* to support such a reading of the anti-SLAPP statute. We read nothing in the language of the anti-SLAPP statute or in *Taheri* that supports the proposition that a defendant speaker may invoke the special procedural protection afforded by the statute only when he or she is a lawyer currently representing a client in litigation which is the subject of a lawsuit-precipitating communication. The determination of the applicability of the anti-SLAPP statute in the first step analysis is not dependent upon the status of a person who spoke, but rather on the nature of the person's speaking activity. As noted above, the protective reach of the anti-SLAPP statute extends to "any writing" that was "made in connection with" a case under consideration by a court. Such is the situation here.

In a post-brief letter, Becerra has drawn our attention to a recent opinion filed by our court, *Drell v. Cohen* (2014) 232 Cal.App.4th 24 (*Drell*), where we explained that a lawyer's demand letter asserting a lien for attorney's fees "may be protected [activity within the meaning of the anti-SLAPP statute], but a complaint is not a SLAPP suit unless the gravamen of the complaint is that defendants acted wrongfully by engaging in the protected activity." (*Id*. at p. 30.) We then went on to explain that the complaint in *Drell* did not allege that the defendant lawyers had engaged in wrongdoing by asserting their lien. "Rather, the complaint asked the court to declare the parties' respective rights to attorney fees." (*Ibid*.) In other words, the defendant was attempting to use the anti-SLAPP statute to strike a plaintiff's cause of action for declaratory relief. As we further noted: "The complaint necessarily refers to defendants' lien, since their demand letter is key evidence of plaintiff's need to obtain a declaration of rights, but the complaint does not seek to prevent defendants from exercising their right to assert their lien." (*Ibid*, fn. omitted.)

Drell is unhelpful to Becerra in the current case. Here, Becerra did attempt to use his sixth cause of action for intentional interference with prospective economic advantage to obtain tort relief from the Jones firm. Because Becerra attempted to use his cause of action to "punish" or "suppress" a defendant (by seeking money damages) for engaging in protected activity, the anti-SLAPP statute applies in the first step analysis. In *Drell*, the plaintiff did not attempt such punishment or suppression, so we found that that anti-SLAPP statute did not apply in the first step analysis.

C. Probability of Prevailing

The trial court correctly determined that Becerra failed to sustain his burden of demonstrating a probability that he would prevail on his cause of action for intentional interference with prospective economic advantage based on Jones's act of mailing the two letters noted above. As we noted above, once a defendant has met the anti-SLAPP statute first step burden of showing that a cause of action arises from protected activity, the burden shifts to the plaintiff to show that he or she has a probability of prevailing on the cause of action. Meaning, the plaintiff must demonstrate that his or her complaint is

legally sufficient to state a cause of action and that it is supported by a sufficient prima facie showing of facts to support a judgment in favor of the plaintiff, if the evidence submitted by the plaintiff is credited. (*Hall v. Time Warner, Inc*. (2007) 153 Cal.App.4th 1337, 1346.) A court must be mindful of the constitutional right to trial when examining the probability of prevailing element of the anti-SLAPP statute procedure. It cannot weigh the evidence, but must determine whether the evidence would be sufficient to support a judgment in the plaintiff's favor as a matter of law, in much the same manner as on a motion for summary judgment. (*Ibid*.)

The elements of a cause of action for intentional interference with prospective economic advantage are (1) an economic relationship between the plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional and wrongful conduct designed to interfere with or disrupt this relationship; (4) interference with or disruption of this relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful conduct. (*Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1153-1154.) Becerra did not present substantial evidence tending to prove these elements.

Becerra's only evidence (without the legal assertions and conclusions) on the "interference" and "economic harm" elements of his cause of action for intentional interference with prospective economic advantage against Jones is found in Becerra's personal declaration. It provides, in pertinent part:

> "7. . . . Without disclosing attorney-client privileged communications, I can state that [Jones's] actions [of mailing two letters to the defense lawyers in the *Sankey* case] have required discussions with my clients and introduced difficulties in those relationships that would not arise but for [Jones's] intrusions. . . . [Jones's] actions . . . affect [my clients] and the plaintiff class in *Sankey* in their efforts to recover by settlement or judgment from the defendant there . . . . An interloper intruding in settlement discussions in a class action represents the introduction of a non-

party with its own demands and interests and can only complicate and increase the difficulties and expenses of such negotiations, contrary to the interests of the class . . . ."

"8. As a direct and proximate result of [Jones's] interference and conduct, [i.e., its acts of mailing two letters to the defense lawyers in the *Sankey* case], I have been injured and will continue to be damaged . . . in an amount to be determined at trial, in that I have been required to retain counsel and seek injunctive and other relief against [Jones] to prevent and preclude them from their course, and to foreclose [their] wrongful assertions and interference."

Becerra's evidence, fully credited, would not support a judgment in his favor on his cause of action for intentional interference with prospective economic advantage. First, to the extent Becerra claims an economically advantageous relationship with his client in the *Sankey* case, Jones did not mail its letters to Becerra's client. There is no evidence of direct interference. Second, to the extent Becerra claims a prospective economic gain from the *Sankey* case, there is no evidence tending to show that Jones's act of mailing of letters to the defense lawyers in the *Sankey* case had any actual interfering impact on the outcome of the *Sankey* case. Becerra's generalized postulate that it is disruptive to have an "interloper intruding in settlement discussions" is not evidence showing any actual damage related to the *Sankey* case.

Becerra's lengthy arguments in his opening brief that Jones failed to present substantial evidence showing it could defeat Becerra's cause of action is not helpful. Because of the public interest in protecting first amendment rights as defined in the anti-SLAPP statute, the burden is on a plaintiff, once the anti-SLAPP statute is shown to apply, to submit some evidence demonstrating there is a probability of prevailing on a challenged cause of action. Becerra's arguments on appeal wrongly flip this burden.

In any event, Becerra cannot prevail here. This is so because the undisputed evidence showed that Jones' letters were protected by the litigation privilege afforded under Civil Code section 47.

Civil Code section 47 provides: "A privileged publication . . . is one made: . . . (b) In any . . . judicial proceeding . . . ." Becerra argues Civil Code section 47 does not apply in his case because Jones's letters were not publications made "in the course of" the *Sankey* case, but rather, were "external" to the *Sankey* case. Becerra would have us restrictively interpret the "in any judicial proceeding" language in Civil Code section 47 to mean something to this effect: "within the actual confines of the framework of a pending case itself." We reject Becerra's argument.

Rubin v. Green (1993) 4 Cal.4th 1187 (*Rubin*) defeats Becerra's argument that a communication by a person having no right to appear in a particularly identified case is not protected by the litigation privilege. In *Rubin*, the plaintiff alleged that the defendant law firm had unlawfully solicited clients. The Supreme Court noted that the allegation, if true, might be a crime and might be subject to discipline by the State Bar, but would still be barred in a court action by the litigation privilege. As explained in *Rubin*: "For well over a century, communications with 'some relation' to judicial proceedings have been absolutely immune from *tort liability* by the privilege codified as [Civil Code section 47, subdivision (b)]. At least since . . . *Albertson v. Raboff* (1956) 46 Cal.2d 375, California courts have given the privilege an expansive reach. Indeed, as we recently noted, 'the only exception to [the] application of [Civil Code section 47, subdivision (b),] to *tort suits* has been for malicious prosecution actions.' . . . (*Silberg v. Anderson* [(1990) 50 Cal.3d 205, 216.)" (*Rubin, supra*, 4 Cal.4th at pp. 1193-1194, italics added, fns. omitted.)

Becerra's arguments on appeal have offered us no persuasive reason not to apply Civil Code section 47, subdivision (b), in his current case as to his sixth cause of action for intentional interference with prospective economic advantage. Jones's letters plainly were "communications" with "some relation" to the *Sankey* case, and, as such, cannot be a basis for tort liability. (*Rubin, supra*, 4 Cal.4th at pp. 1193-1194.)

II. The Ninth Cause of Action

In its cross-appeal, Jones contends the trial court erred in denying its anti-SLAPP motion as to Becerra's ninth cause of action for violation of the UCL insofar as the cause of action is predicated upon Jones's acts of mailing letters to the defense lawyers in the *Sankey* case. We disagree.

The Setting Surrounding the Anti-SLAPP Motion

Becerra's ninth cause of action for violation of the UCL was predicated on two underlying claims.[4] First, Becerra alleged that Jones received attorney's fees in a case known as the "*Ferguson* matter;" that Jones owed Becerra money as a result of his work on the *Ferguson* matter; and that Jones wrongly did not pay the money owed to Becerra. Second, Becerra alleged that Jones wrongly mailed letters to the defense lawyers in the *Sankey* case. (See discussions, *ante*.)

In its anti-SLAPP motion, Jones overlooked the allegations in Becerra's ninth cause of action dealing with the *Ferguson* matter. Jones argued that Becerra's sixth and ninth causes of action were both based upon the Jones firm's act of mailing letters to the defense lawyers in the *Sankey* case, and that both causes of action were fatally flawed because the letters could not support liability. In short, Jones sought to strike both causes of action in their entirety for a reason jointly applicable to both causes of action, namely, there could be no liability arising from the *Sankey* case.

In denying Jones's anti-SLAPP motion as to Becerra's ninth cause of action, the trial court apparently ruled that Becerra's his ninth cause of action could not be stricken in its entirety because it alleged mixed claims, i.e., claims related to the *Ferguson* matter and the *Sankey* case, which were not wholly addressed by Jones's focus on the letters it wrote in connection with the *Sankey* case.[5] We understand the court's ruling as to the

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[4] To state a cause of action for violation of the UCL, a plaintiff must allege that a defendant committed a business act or practice that was "fraudulent, unlawful, or unfair." (See, e.g., *Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117, 1136.)

[5] The court's minute order and ensuing formal written order formal do not expressly state the court's reasons for its ruling not to strike Becerra's ninth cause of action. The

ninth cause of action to embody the court's determination that Jones's anti-SLAPP motion did not establish that its acts in connection with the *Ferguson* matter were protected activity.

Analysis

Jones argues for the first time on appeal that a partial striking of the *Sankey* case allegations in Becerra's ninth cause of action is appropriate. However, Jones's anti-SLAPP motion sought to strike Becerra's ninth cause of action as a whole, rather than as it now proposes on appeal, to strike only the *Sankey* case allegations. Jones did not ask the trial court to parse the predicate "unlawful or unfair" claims underlying Becerra's UCL cause of action, and we will not do so for the first time on appeal. To do so would be unfair to both Becerra and to the trial court. (*In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 110-111.)

But even were we to address Jones's "partial striking" argument, we would not reverse the trial court's order as Becerra's ninth cause of action because we do not agree with Jones that the anti-SLAPP statute authorizes the striking of discrete allegations within a cause of action. We agree with the line of cases which have held that the anti-SLAPP statute authorizes a court to strike a cause of action, but unlike an ordinary motion to strike under section 436, it cannot be used to strike specific allegations within a cause of action. (See, e.g., *A.F. Brown Electrical Contractor, Inc. v. Rhino Electric Supply, Inc*. (2006) 137 Cal.App.4th 1118, 1124, citing *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 308; *Wallace v. McCubbin* (2011) 196 Cal.App.4th 1169, 1211; and see also *Oasis West Realty, supra,* 51 Cal.4th at p. 820 [once a plaintiff shows a probability of prevailing "'on any part of its claim,'" the plaintiff has established that "'a cause of action has some merit and the entire cause of action stands'"]) "[A] court need not engage in the time-consuming task of determining whether the plaintiff can substantiate all theories presented within a single cause of action and need not parse

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parties did not arrange for a court reporter to record the hearing on the anti-SLAPP motion, thus we do not have a reporter's transcript to show what the court may have said at the time the parties orally argued the motion in court.

the cause of action so as to leave only those portions it has determined have merit." (*Mann v. Quality Old Time Service, Inc. v.* (2004) 120 Cal.App.4th 90, 106 (*Mann*).)

We acknowledge a contrary line of cases cited by Jones which support the partial striking of a cause of action under the anti-SLAPP statute. (see, e.g., *Cho v. Chang* (2013) 219 Cal.App.4th 521, 526-527.) As we have indicated, we agree with the contrary line of cases.[6]

III. Attorney's Fees

Becerra contends the trial court erred in awarding $27,860 in attorney's fees and costs to the Jones firm. We disagree.

A "prevailing defendant" on a special motion to strike pursuant to the anti-SLAPP statute "shall be entitled to recover his or her attorney's fees and costs." (§ 425.16, subd. (c)(1).) This statutory language means what it says; an award of attorney's fees and costs is mandatory when a defendant brings a successful anti-SLAPP motion to strike. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (*Ketchum*); see also *Pfeiffer Venice Properties v. Bernard* (2002) 101 Cal.App.4th 211, 216 [the anti-SLAPP statute embodies a legislative intent mandating the award of attorney fees to prevailing defendants in SLAPP suits].)

However, where a defendant's anti-SLAPP motion is only partially successful, as here, the issue of whether the defendant is a "prevailing defendant," and entitled to attorney's fees, is largely a matter for the trial court's fact-finding discretion. (See generally *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1016-1020 (*ComputerXpress*).) A defendant need not prevail against every cause of action he or she challenges by an anti-SLAPP motion to be considered a prevailing defendant for purposes of an award of attorney's fees under the anti-SLAPP statue. (*Id*. at p. 1019.)

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[6] While Jones's combined respondent's brief and cross-appellant's opening brief on appeal discusses *Cho v. Chang, supra,* 219 Cal.App.4th 521 extensively, the firm's anti-SLAPP motion did not contain even a single citation to *Cho*.

The language "prevailing defendant" used in the anti-SLAPP statute must be interpreted broadly in favor of an award of attorney fees to a defendant who is "partially successful" on an anti-SLAPP motion. (See *City of Colton v. Singletary* (2012) 206 Cal.App.4th 751, 782.) This being said, a court is not required to award attorney's fees to a defendant who partially prevails on an anti-SLAPP motion, particularly where the results of the motion are so insignificant that the defendant did not achieve any real practical benefit from bringing the motion. (*Ibid*.)

Becerra faults the trial court for failing to "engage in the analysis necessary for it to reasonably exercise its discretion;" he claims the court should have issued a statement of decision so that it would have been required to go through a contemplative evaluation process to support its decision to award attorney's fees. We are not persuaded. We presume the court understood and correctly applied the law to the facts, and Becerra proffers no real references to the record in support of his claim that the court abandoned its duty. There is nothing in Becerra's argument to support his claim that the trial court failed to appreciate its discretion, or that the court failed to undertake the necessary factual analysis to exercise its discretion.

Becerra offers no persuasive authority in support of his argument that a trial court is required to issue a statement of decision to support an attorney's fee award on an anti-SLAPP motion, and *Ketchum* defeats such an argument. In *Ketchum*, the trial court awarded $149,000 to a prevailing defendant on an anti-SLAPP motion. (*Ketchum, supra,* 24 Cal.4th at p. 1129.) The plaintiff appealed, arguing that the trial court had failed to provide a "reasoned explanation" for the amount awarded. (*Id*. at p. 1140.) The Supreme Court rejected this argument: "The superior court was not required to issue a statement of decision with regard to the fee award. [Citation.] Moreover, although Ketchum opposed the motion for attorney fees, he did not request a statement of decision with specific findings. ' "All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." ' [Citation.] As we explained in *Maria P.*: 'It is the burden of the party challenging the fee award on appeal to provide an adequate record to assess error.

[Citations.] Here, [Ketchum] should have augmented the record with a settled statement of the proceedings. [Citations.] Because [he] failed to furnish an adequate record of the attorney fee proceedings, [Ketchum's] claim must be resolved against [him].' [Citation.]" (*Ketchum, supra*, 24 Cal.4th at pp. 1140-1141.)

We reject Becerra's argument that the award of attorney's fees must be reversed because the trial court's decision to rule in favor of Jones on its anti-SLAPP motion did not provide any significant benefit to the firm. The anti-SLAPP motion raised one major substantive issue, namely, could the two letters that Jones mailed concerning the *Sankey* case give rise to tort liability. The trial court ruled in favor of Jones on this issue. In so doing, it cut down the scope of Becerra's lawsuit. Jones achieved a significant benefit from its anti-SLAPP motion.

This brings us to the issue of the amount of the attorney's fees that the trial court awarded. Jones requested an award of $27,820 for work on the anti-SLAPP motion by two attorneys. The court granted Jones's request in its entirety. On appeal, the amount of an award of attorney's fee award under the anti-SLAPP statute is reviewed under the deferential abuse of discretion standard. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322.) We see no abuse of discretion. The award was relatively modest. The number of hours for which fees were sought were not excessive as a matter of law, and appeared to the trial court (and to this court) to have been reasonable. Jones provided the trial court with contemporaneous time records. A sworn declaration in support of a request for attorney's fees is prima facie evidence that the fees were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682; *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1586-1587.) We see nothing in the current case so remarkable as to cause us to find the trial court's determination as to the amount of attorney's fees is "'clearly wrong.'" (*Christian Research Institute v. Alnor, supra,* 165 Cal.App.4th at p. 1322.)

Becerra next contends that the trial court erred in failing to allocate attorney's fees as between Jones's anti-SLAPP work to challenge Becerra's sixth cause of action and his ninth cause of action. Becerra relies on *ComputerXpress, supra,* 93 Cal.App.4th at pages

1016-1020 and *Mann, supra,* 139 Cal.App.4th at pages 342-345 in support of the proposition that a "prevailing defendant" on a particular cause of action challenged by an anti-SLAPP motion is not entitled to recover attorney's fees for any anti-SLAPP work in challenge to a cause of action on which the defendant was not successful. Jones's brief on appeal contains extensive argument in support of the trial court's $27,820 attorney's fee award, mainly from a broader "abuse of discretion" angle, but the firm does not directly address Becerra's more narrowly focused "allocation of fees" argument.

Nonetheless, Becerra's argument on appeal does not persuade us to find the trial court abused its discretion in failing to allocate Jones's attorney's fees as between Becerra's sixth and ninth causes of action. Becerra's argument would have traction were we faced with a situation in which a defendant made challenges to two different causes of action based on separate legal arguments, each requiring different and separate research and preparation. Here, Jones jointly attacked Becerra's sixth and ninth causes of action based upon the same premise — that Jones could not be liable for mailing letters to the defense counsel in the *Sankey* case. In this situation, the trial court could have reasonably concluded that all of the work done by Jones, and all of its attorney's fees, would have been incurred in any event. In other words, the attorney's fees incurred on the anti-SLAPP motion would have been the same, even if the ninth cause of action was not attacked in the anti-SLAPP motion. There was truly only one legal issue associated with the anti-SLAPP motion and it was not unreasonable for the trial court to award Jones for all of its attorney's fees incurred in connection with the one legal issue. Becerra's half-page argument on appeal, consisting mostly of citations to legal authority, is not sufficient to meet his burden on appeal of showing error.

Finally, we agree with Becerra's extensive argument challenging the trial court's decision to award $40 in costs to Jones for its parking expenses ($20 attendant with the court hearing on its anti-SLAPP motion and another $20 attendant with the court hearing on its motion for its attorney's fees. Items allowable costs are defined by statute. (Code Civ. Proc., § 1033.5.) Routine local travel expenses, which would include parking fees, are only recoverable when incurred to attend depositions. (*Id.*, subd. (a)(3); and

see also *Gorman v. Tassajara Development Corp*. (2009) 178 Cal.App.4th 44, 72.) On remand, the trial court shall, at a time convenient to the court, strike the $40 awarded to Jones for its parking costs to attend the court hearings on its anti-SLAPP motion.

IV. Attorney's Fees on Appeal

Jones Bell contends it is entitled to its attorney's fees on appeal. We disagree. Where an order granting a defendant's anti-SLAPP motion is affirmed on appeal, as here, or an order denying a defendant's anti-SLAPP motion is reversed on appeal, section 425.15, subdivision (c), authorizes the appellate court to make an award of reasonable attorney's fees to the "prevailing" defendant. (See, e.g., *Trapp v. Naiman* (2013) 218 Cal.App.4th 113, 122.) As noted above, the determination as to whether a particular defendant is a "prevailing" defendant is a matter of judicial discretion. After reading both parties' briefs on the appeal, and on the cross-appeal, we are not sufficiently impressed to find either party is a "prevailing" party. Neither party won anything in our court; everything ordered in the trial court remains undisturbed. The parties are to bear their own costs on appeal, including their attorney's fees.

DISPOSITION

The trial court's anti-SLAPP orders are affirmed in its entirety, except for the $40 modification noted.[7] Each party to bear their own costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.

[7] Becerra's motion on appeal for judicial notice is denied. Jones's motion on appeal to strike Becerra's supplemental appendix is denied.